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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,088	04/13/2001	Gary Reding	20697-301	2977

7590 02/16/2005

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EXAMINER
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CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

8  
09/035,088

Applicant(s)

VARONA, EUGENIO GO

Examiner

Michael Cuff

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by  
[www.usafutures.com](http://www.usafutures.com).

[www.usafutures.com](http://www.usafutures.com), dated 1/25/99 as shown by archive.org, shows an online brokerage firm. (see online trading in directory). The "hedging – soybeans example", found in the directory, explains the use of the futures market in the agricultural market. A futures contract includes the type of commodity, the quantity and a price, which is equal to the local cash bid or flat price and a basis price. (this is in the memory) The online brokerage (having first computing sub-system) receives electronic request from clients. (some clients are intermediaries) [www.usafutures.com](http://www.usafutures.com) has communications with the commodities exchange. (second sub-system) The system has a web page and each account holder or client would have access specific to their own account. (third sub-system) From the example, it is clear that a producer of an agricultural commodity would be a client and therefore could be received at the website. The determination or calculation of a flat price is an inherent feature of agricultural price structure. A broker would be well aware of this old and well-known simple mathematical relation. The hedging process (fourth sub-system) described is where the broker

(acting on behalf of a client) obtains future contracts in order to reduce price risk when a client is prepared to trade in the actual commodity. Online brokers have real time commodity pricing, which is on their websites, show in graphs and tables (correlating).

### ***Response to Arguments***

2. Applicant's arguments filed 11/29/04 have been fully considered but they are not persuasive.

Applicant asserts that the reference does not show a third computing subsystem calculating the flat price by adding the basis to a current trading price. The examiner does not concur. First, applicant's specification does not even have a "third computing subsystem". Second, the calculation of the flat price by adding the basis to a current price is inherent, by definition, in the price of the futures contract. This was stated in the rejection. See applicant's own background, "Daniels trading glossary" and "North Carolina Soybean and Corn Prices with Basis 1980-2003" as evidence of inherency.

Applicant asserts that the reference does not generate an exchange structure specific to the intermediary. The examiner does not concur. The reference shows the ability for online trading specific to anyone with Internet access using the references system. This meets the metes and bounds of the exchange structure. See table of contents for external sources.

Applicant asserts that the reference does not show elements 1(n), 1(m) and 5(k). The examiner does not concur. The shown online trading capability meets these limitations.

The applicant asserts that the reference is not an enabling disclosure and cites In re Hoeksema and In re Donohue. The examiner does not concur. The citations are off point. These citations are used to determine how much a reference can be used when operability is in question. This argument is premature since, per MPEP 2121:

#### **PRIOR ART IS PRESUMED TO BE OPERABLE/ ENABLING**

When the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980).

Applicant has provided only opinions, not facts, for rebutting the presumption of operability. Also, applicant's assertion that "there is no mention of any method steps, routines, examples, apparatus, system, server, computer hardware or computer software" is false. Online trading inherently has a method, routines, an apparatus, system, server, computer hardware and computer software.

#### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cuff whose telephone number is (703) 308-0610. The examiner can normally be reached on 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Cuff  
February 7, 2005